

PL II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

10,950

FILE: B-194682

*Personal
Name*

DATE: August 8, 1979

MATTER OF: ~~Mr.~~ George E. Nelson

DIGEST: When an employee performs duties which should be assigned to a position in a higher grade than the one he occupies, no right to increased pay exists until a higher grade position is officially classified and the employee is appointed to it.

This action is in response to a letter dated February 9, 1979, from Mr. George E. Nelson, a civilian employee of the Department of the Air Force, concerning his claim for retroactive temporary promotion and backpay for the period March 9, 1970, through January 14, 1973.

The matter of this claim was the subject of a settlement by our Claims Division which disallowed that portion of the claim which antedated November 1, 1971, based on the provisions of the barring act. The remainder was disallowed on the basis that while Mr. Nelson may have performed duties which if properly graded would have been placed in a higher grade, since there was no established position for those duties at such a higher grade, no substantive right to increased pay accrued during that period. The request for review is limited to the disallowance of that part of the claim not barred.

Mr. Nelson contends that the documents submitted with his claim shows that an official position was being created; that he was selected from the promotion roster to fill that position and that he performed all of the position duties from March 9, 1970, through January 14, 1973.

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The file reflects that Mr. Nelson was employed at Norton Air Force Base, California, as a Personnel Management Specialist, grade GS-11. In March 1970, a reorganization of the Base Civilian Personnel Office was proposed, developed and submitted to appropriate base authority for approval. One of the new positions proposed to be created was the position of Supervisory Personnel Staffing Specialist, GS-212-12. At the same time that the reorganization plan was being developed a promotion roster for the position in question was prepared and Mr. Nelson was selected to fill the to be created position.

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B-194682

Apparently, acting on the assumption that the Civilian Personnel Office reorganization plan would be summarily approved, Mr. Nelson commenced performing the proposed duties of the position March 9, 1970. The files further reflect that in June 1970, higher authority apparently advised that approval of the proposed reorganization plan was to be delayed approximately 1 year until the effectiveness of its operation could be determined. Collateral with this delay, Mr. Nelson admits that his official promotion to the GS-212-12 position was dependent upon final approval of the position of Chief of the Staffing Section at the GS-13 level and that his official promotion to GS-12 was never consummated during the period in question.

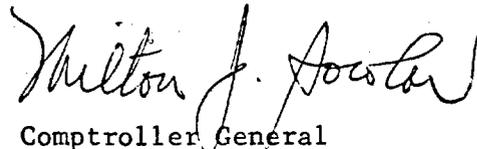
Chapter 53 of title 5, United States Code, provides a system whereby General Schedule positions in the Federal Government are grouped and identified by classes and grades based on their duties, responsibilities and qualification requirements. Individual agencies under the guidance of the Civil Service Commission (now Office of Personnel Management) are authorized to place positions in appropriate classes and grades consistent with their needs and in conformance with standards published by the Commission. In this regard, CSC Bulletin No. 300-40, dated May 25, 1977, provided a reminder to all agencies in paragraph 4 thereof, and citing to the United States Supreme Court decision in United States v. Testan, 424 U.S. 392 (1976), that in order for an employee to receive pay for the performance of particular duties that would qualify as a position, the position must be an established one, classified under an occupational standard to a particular grade or pay level. Further, classification actions establishing or upgrading a position may not be made retroactive for backpay purposes.

It is fundamental that in order for an individual to be entitled to compensation for employment by the Federal Government in a particular position or grade level, such position or grade must be recognized and administratively established at the time as the individual is performing such duties. This is true even where an individual is occupying a position at one grade level and is performing duties which would be performed by an employee classified at a higher grade. It is also true that an employee is only entitled to the salary of the position to which he is officially appointed. See United States v. Testan, supra, at 402.

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According to the material on file, the duties being performed by the employee during the period in question appeared to be different than those of the position he held as a Personnel Management Specialist and which duties presumably would have been assigned a higher grade. However, there did not exist an established, official position for those duties during the period in question. Since the record shows that the only position the employee held was that of Personnel Management Specialist, GS-11, during the period in question, that is the only compensation to which he is entitled.

Accordingly the action taken by our Claims Division is sustained.

A handwritten signature in cursive script that reads "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name and title.

For The Comptroller General
of the United States